

cable television and broadcast television are not so much substitutes as they are complements to one another. According to the 1994 Cable Competition Report, during the 1993-94 season, the major television networks ABC, CBS, NBC and Fox had a combined share of 72% of all prime-time viewers.⁵² During the 1992-93 season, two-thirds of all cable households watching television actually watched retransmitted broadcast channels.⁵³ The high percentage of cable viewers who watched retransmitted broadcast channels indicates that viewership of local television broadcasts has not really been significantly replaced by cable viewership. Rather, local broadcasts have become important components of cable programming,⁵⁴ enhancing the value of cable services offered to subscribers.⁵⁵

Moreover, cable television is not an effective substitute for broadcast television because consumers have to pay to receive cable while they can receive broadcast television for free. According to the 1994 Cable Competition Report, only about 62% of all television households currently passed by cable actually

⁵² 1994 Cable Competition Report, 9 FCC Rcd at 7492.

⁵³ Id. In fact, demand for television stations is at one of its highest level in years. Id. at ¶ 99 (citing J.A. Zier, TV Buyers Agree: It's a Seller's Market, Broadcasting and Cable, Apr. 25, 1994, at 22; G. Foisie, Good Revenue Gains Spark, Broadcasting and Cable, Apr. 25, 1994, at 18).

⁵⁴ See Veraldi, supra note 46, at 488 (suggesting that "broadcasters and cable systems may find new and profitable partnerships in which broadcasters provide the content and cable operators provide the delivery systems.").

⁵⁵ See 1994 Cable Competition Report, 9 FCC Rcd at 7494, n. 288.

subscribe.⁵⁶ Even with recent rate cuts ordered by the FCC, cable remains unaffordable for many Americans.⁵⁷ Unless and until cable television attains subscribership comparable to penetration by broadcast television, it is not an effective substitute for diversity purposes.

Finally, even for members of the public that subscribe to cable, most cable systems provide little or no local news and public affairs programming. The OPP report found in 1991, that "[l]ocal programming, particularly news and public affairs, remains the single programming service provided by local broadcast stations that is not yet widely offered by cable."⁵⁸

Nor has this situation changed since 1991.⁵⁹ Although the first 24-hour local cable news channel was launched in 1986,⁶⁰ by 1995, only about eight regional cable news channels were in

⁵⁶ Id. at ¶ 19.

⁵⁷ See Sohn and Schwartzman, supra note 34, at 387. See also P. Farhi, Satellites Beam Down Competition to Cable TV Firms, W. Post, Sept. 27, 1994, at A1 (stating that cable operators charge roughly \$29.95 per month for basic service).

⁵⁸ OPP Report, 6 FCC Rcd at 4051.

⁵⁹ Comments filed in an earlier stage of this proceeding showed that "the proliferation of cable channels and other technologies has not in turn led to a significant increase in either market diversity or locally oriented programming." TRAC/WACCI-VCR Reply Comments, supra note 10, at 4-5 (emphasis in original).

⁶⁰ News 12 Long Island reportedly lost more than \$20 million since it began operating in December 1986, and only now is about to break even. E. Sanger, Cablevision to Establish More Local News Channels, Newsday, Mar. 24, 1995 at A69.

operation.⁶¹ Furthermore, broadcasters are often involved in these cable channels. For example, in Washington, D.C., the regional cable news channel, News Channel 8, and WJLA-TV (channel 7) are commonly owned by Allbritton Communications.⁶² Through its partially owned ALLNEWSCO, Allbritton runs the news programs of News Channel 8 and WJLA-TV, and will also be producing the newscast for WDCA-TV (channel 20) beginning in August.⁶³ Thus, even where local cable channels exist, they do not necessarily increase viewpoint diversity in local programming.

Although the Further Notice mentions PEG channels (public, educational and governmental channels), which franchise authorities may require under Section 611 of the Cable Act of 1984,⁶⁴ PEG channels generally do not provide an effective substitute for local news and issue responsive programming available on broadcast television. PEG programming often makes a substantial contribution to the discussion of local issues where it exists, however, only a small minority of cable systems offer PEG channels. In 1990, only 16.5% of cable systems had public access; 12.9% had educational access, and 10.7% had governmental

⁶¹ Id. Although this article describes plans by Cablevision and Time Warner to expand their local cable news operations in the greater New York metropolitan area, such efforts remain relatively rare.

⁶² See More News at 10 in D.C., Broadcasting and Cable, Apr. 17, 1995, at 28; Comm. Daily, Apr. 13, 1995, at 11.

⁶³ More News at 10 in D.C., Broadcasting and Cable, Apr. 17, 1995, at 28.

⁶⁴ 47 USC § 531 (1991).

access.⁶⁵

Leased access channels provide even less of a contribution of local news and public affairs programs. Although § 612 of the Cable Act of 1984 mandated that cable systems make available leased access channels,⁶⁶ that provision was rarely used because of unreasonable rates, terms and conditions demanded by cable operators.⁶⁷ In an attempt to make leased access an effective outlet for diverse views, Congress amended that provision in the Cable Act of 1992, directing the FCC to establish reasonable rates, terms and conditions for leased access.⁶⁸ While the FCC has adopted rules intended to implement this directive, the rates established by the FCC remain too high to facilitate the leasing of cable channels to provide local news and issue responsive programming.⁶⁹

In sum, cable television generally does not provide a significant amount of local news and public affairs programming

⁶⁵ P. Aufderheide, Cable Television and the Public Interest, 43 J. of Comm. 52, 58 (1992).

⁶⁶ 47 USC § 532 (1991).

⁶⁷ D.N. Lampert, Cable Television: Does Leased Access Mean Least Access, 44 Fed. Comm. L. J. 245, 278 (1992). Moreover, to the extent that leasing has occurred, we are only aware of a few instances where leased access programming has addressed local issues.

⁶⁸ 47 USC § 532 (Supp. 1995).

⁶⁹ Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Report and Order and Further Notice of Proposed Rulemaking in MM Docket 92-266, 8 FCC Rcd 5631, 5948-52 (1993), recon. pending. See Center for Media Education Petition for Reconsideration of Report and Order in MM Docket 92-266, filed June 21, 1993.

and is not available to a significant portion of the public. Thus, the Commenters disagree with the Commission's tentative conclusion at paragraph 71 that cable ought to be included as a substitute for broadcast television stations for diversity purposes. If, however, cable systems are to be considered in assessing the number of diverse voices within a community, they should only be counted in communities where cable subscribership is comparable to the audience reach of broadcast television in that market⁷⁰ and the cable system in fact offers a local news channel (which is not programmed by an already existing local broadcast station) or has PEG channels or leased access channels that actually provide a substantial amount of programming addressing issues of local concern.⁷¹

2. Newspapers and radios are not effective substitutes for broadcast television with respect to news and public affairs programming.

In addition, newspapers and radios are not effective substitutes for broadcast television for diversity purposes. Like cable television, newspapers and radios are actually more

⁷⁰ The Commission should consider actual subscribership rather than homes passed, since cable programming will not contribute to informing the community if people cannot watch it.

⁷¹ To the extent that a cable system offers more than one channel with a significant amount of local news or issue-responsive programming and these channels are originated or selected by the cable operator, the Commission should count these channels as one voice, since all are within the control of the cable operator. To the extent that PEG or leased access channels, which are not controlled by the cable operator, provide a substantial amount of news or issue-responsive programming, they could be counted as a separate voice. Retransmitted local broadcast signals, of course, would not be counted at all, since they do not add an additional viewpoint to the community.

complementary to broadcast television with respect to local news and issue-responsive programming, than they may be substitutable for one another. Despite the overwhelming preference for television as a source of news and information, the public may turn to radio or newspapers for such information when there is no television available or when television viewing is not practicable, e.g., while driving or working. Nevertheless, several factors indicate that newspapers and radios are not effective substitutes for broadcast television.

First, as suggested in paragraph 73 of the Further Notice, newspapers and radios lack the profound visual effect of television. As Judge David Bazelon has observed:

It is simply impossible to exaggerate the impact of TV . . . on our lives It is often said . . . [that] TV has so reordered our lives that we do not yet recognize the change.⁷²

The fact that 72% of Americans rely upon television as their primary news source, and that over half of all Americans believe television to be more credible than any other medium demonstrates that the effect of the visual impact of television is profound.⁷³

Second, as the Commission notes in paragraph 73 of the FNPRM, newspapers' ability to provide current local news and public affairs information is limited by physical timing constraints. Unlike broadcast television stations, newspapers

⁷² D.L. Bazelon, FCC Regulation of the Telecommunications Press, 1975 Duke L.J. 213, 221 (May 1975).

⁷³ See Roper Report, supra note 48, at 17-18.

are not equipped to provide the public with up-to-the-minute coverage of issues or developments of concern to the community. In comparison, the nature of local television broadcasting lends itself to providing such up-to-the-minute coverage.

Third, the high adult illiteracy rate in America poses an access problem with respect to considering newspapers as an effective substitute for broadcast television. In 1989, over 23 million American adults lacked the basic reading skills that would enable them to read a newspaper.⁷⁴ An additional 45 million adults could read only with minimal comprehension.⁷⁵ In light of these significant figures, the adequacy of newspapers as a medium for the dissemination of local news and public affairs information concerning the community is severely diminished. Thus, the Commission must conclude that newspapers cannot be considered effective substitutes for local television broadcasts for viewpoint diversity purposes.

Finally, radio is not a satisfactory substitute for broadcast television because it has significantly reduced its role as a provider of local news and public affairs information. While broadcast radio stations have public trust obligations to provide programming addressing issues of concern to their community,⁷⁶ in practice, deregulation has resulted in a

⁷⁴ Eliminating Illiteracy: Hearings Before the Subcommittee on Education, Arts and Humanities, 101st Cong., 1st Sess. 2 (1989) (prepared opening statement of Senator Simon).

⁷⁵ Id.

⁷⁶ OC/UCC v. FCC, 707 F.2d 1413, 1420 (1983).

significant decrease in radio coverage of news.⁷⁷ In a study conducted by the Radio Television News Directors Association, radio deregulation was determined to have contributed to the shut-down of 46.2% of local news operations in commercial radio stations surveyed.⁷⁸ Similarly, another study found that radio deregulation led to budget cuts in news and public affairs programming.⁷⁹ Thus, newspapers and broadcast radio are not effective substitutes for broadcast television for viewpoint diversity purposes.

3. DBS, MMDS, VDT, VCRs, and computer services and networks are not effective substitutes for broadcast television with respect to local news and issue-responsive programming.

Finally, the Commenters strongly support the Commission's proposal to exclude DBS, MMDS, VDT, VCRs, and computer services and networks from its analysis of viewpoint diversity in news and public affairs programming. Because VDT is not commercially available, an accurate assessment of its substitutability for over-the-air television with regard to local news and public affairs programming is not yet possible. With respect to the ability of other outlet alternatives to provide local news and issue-responsive programming, the Commission notes that these media outlets

All provide . . . entertainment programming [similar to

⁷⁷ See McKean and Stone, supra note 14, at 24; Aufderheide, supra note 11, at 51.

⁷⁸ McKean and Stone, supra note 14, at 24.

⁷⁹ Aufderheide, supra note 11, at 51.

cable]; however . . . the presence of these media . . . has little more relevance to our diversity concerns than would the presence of motion picture theaters in that market . . .
.⁸⁰

The Commission also notes that:

[N]one of these currently appear to have the availability or subscribership or programming that would enable us to conclude that for diversity purposes they are substitutable for broadcast television.⁸¹

The Commenters agree that low levels of subscribership to DBS⁸², MMDS⁸³, and computer networks and services⁸⁴ present sizeable barriers in their ability to be considered effective substitutes for broadcast television. Each of these services reaches an insufficient percentage of viewers to be realistically substitutable for broadcast television. Moreover, the costs of

⁸⁰ FNPRM at ¶ 72.

⁸¹ Id.

⁸² As of February 1995, there were approximately 600,000 subscribers to DBS. R. Bloomquist, Deep Dish: A Satellite Dish the Size of a Pizza Pan May Change the Way You Watch TV. And It Might Not. Here's Everything You Need to Decide Whether DSS Is For You, Fast Forward, Feb. 1995, at 8.

⁸³ In May 1994, there were approximately 500,000 wireless cable subscribers, with growth anticipated to reach 4 million subscribers by the year 2000. T. Kerver, The Wild World of Wireless Video, Cablevision, May 23, 1994, at 88.

⁸⁴ As of March 31, 1995, only 7.3 million subscribers used online services; moreover, since approximately 20% of users subscribe to two or more services, the actual number of online households is only around 5.9 million. Commercial Online Services Grow to 7.3 Million Customers, PR Newswire, Apr. 7, 1995, Financial News Section.

these services-- DBS⁸⁵, MMDS⁸⁶, and computer services⁸⁷-- are quite substantial, thus presenting serious financial access concerns. Moreover, as the Commission observes, access to computer networks and services, such as the Internet, Prodigy, and CompuServe, is also limited by computer literacy.⁸⁸ Thus, computer services are not substitutable for over-the-air television, in light of these access concerns.⁸⁹

The Commission further notes that DBS, MMDS, and VCRs lack the capability for local origination necessary for effective provision of local news and public affairs programming.⁹⁰ Specifically, "[a]lthough DBS will have certain public interest obligations mandated, they doubtless will not be able to include

⁸⁵ In addition to a monthly fee similar to cable, the receiving equipment costs approximately \$700. Bloomquist, supra note 82, at 11.

⁸⁶ The cost of equipment is \$300-400, and monthly subscription rates are comparable to those of cable television. Kerver, supra note 83, at 88.

⁸⁷ Not only must a consumer own one of the "newer personal computers capable of supporting a fax-modem and subscribe to an online service or Internet access provider, at a minimum cost of about \$ 10 per month . . . users pay for additional phone time, usually a local, but sometimes a long-distance, call." J. Schoolman, Online Shopping- It's New, It's Novel, But It's Limited, The Reuter Business Report, Apr. 5, 1995.

⁸⁸ FNPRM at n. 89.

⁸⁹ Furthermore, a recent study found that only 12% of the public is "very interested" in the services offered by the "information superhighway," while 57% were not interested. Roper Report, supra note 48, at 12.

⁹⁰ FNPRM at ¶ 73.

local coverage."⁹¹

Likewise, VCRs are not equipped to address and provide programs covering issues of local concern. As the Commission states:

While many available video tapes are informational and instructional, most are entertainment and few, if any, involve issues of immediate local concern, the type of issues that lay at the heart of our diversity interests.⁹²

As the Commission appropriately notes, consideration of media alternatives such as DBS, MMDS, and especially VDT as effective substitutes for broadcast television with respect to local news and public affairs programming is not possible. In comparison to viewership of broadcast and cable television, subscribership to DBS and MMDS is still too small to be any serious concern to the Commission's diversity analysis, and VDT service is not yet offered on a community basis. Furthermore, various access concerns related to these media outlets as well as computer services present sizeable barriers. For these reasons, the Commenters urge the Commission to adopt its proposal that DBS, MMDS, VCRs, VDT, and computer networks and services should not be included in the diversity analysis with respect to the

⁹¹ Id. at n. 106. See also Implementation of Section 25 of the Cable Television Consumer and Protection Act of 1992, Notice of Proposed Rulemaking in MM Docket No. 93-25, 8 FCC Rcd 1589, 1596 (1993) (tentatively concluding that local DBS service is not technically and economically feasible); 1994 Cable Competition Report, 9 FCC Rcd at 7477 (noting that DBS does not offer local broadcast signals); T. Shales, The Future Is Now, And It Isn't on Cable, W. Post, Dec. 21, 1994, at C1 (noting the same).

⁹² FNPRM at n. 89.

provision of local news and public affairs programming. Moreover, cable television, radio and newspapers should also not be considered in the Commission's diversity analysis.

II. RECOMMENDATIONS FOR MULTIPLE OWNERSHIP RULES

In light of the fact that no other media outlet is a substitute for broadcast television for diversity purposes, the Commenters also strongly urge the Commission to keep the ownership limits at their present levels. Any further relaxation of these regulations would reduce or eliminate what viewpoint diversity currently exists in local broadcast news and other issue-responsive, public affairs programming. As the Commission notes in paragraphs 57-59 of the Further Notice, it has traditionally carried out its statutory public interest mandate to ensure viewpoint diversity through both direct content regulation, such as the Fairness Doctrine, and indirect structural regulation, such as employment and ownership rules.⁹³ However, the Commission has abandoned most of its content-based regulations, explaining that it is "part of an overall scheme that has as its hub a shift in our regulatory approach based on structural means of achieving diversity rather than one emphasizing conduct."⁹⁴

Consequently, structural regulations, such as multiple

⁹³ See also Deregulation of Radio, Notice of Inquiry and Proposed Rule Making in BC Docket No. 79-219, 73 FCC 2d 457, 482 (1979).

⁹⁴ Id. at 539.

ownership, duopoly and cross-ownership rules, are currently the only significant means by which the Commission can regulate a broadcaster's use of the public airwaves in furtherance of its statutory public interest obligation. Further relaxation of these rules would contravene the Commission's statutory responsibility to achieve viewpoint diversity in local news and public affairs programming.

A. The existing local ownership rules should be retained in order to preserve the Commission's ability to promote viewpoint diversity.

The Commenters strongly support retention of existing ownership duopoly rules and reject any proposal to permit ownership of greater than one television station per market. Currently, the duopoly rules prohibit common ownership of two television stations whose grade B contours overlap. As the Commission correctly notes, the local ownership rules implicate more serious diversity concerns than changes to the national ownership rules.⁹⁵ Nonetheless, the Commission considers whether, for the purposes of setting local ownership limits, it should relax the local rules to permit common ownership up to a minimum number of independent suppliers that must remain in a given region.⁹⁶ Similarly, the Commission considers whether it should permit each station owner to acquire a second station in the same market, until a minimum number of independent stations

⁹⁵ FNPRM at ¶ 105.

⁹⁶ Id. at ¶ 121.

remain.⁹⁷

The First Amendment goal of viewpoint diversity cannot be attained by setting a minimum number of independent voices that provides sufficient diversity. Indeed, it is inappropriate for the government to determine that any minimum number of independent stations remaining in a market would be enough diversity. Therefore, the Commission must reject any proposal to set local ownership limits based on a minimum number of independent suppliers remaining in a given region.

In addition, the Commission proposes in paragraph 116 of the FNPRM to change from a Grade B contour overlap rule to a Grade A contour overlap rule. However, the Commenters see no rational basis related to viewpoint diversity for changing this rule. As noted in paragraph 117 of the FNPRM, changing to the Grade A contour standard would significantly narrow the geographic area in which common ownership of television stations would trigger the local ownership rules, thus enabling a single entity to own multiple stations that may be separated by as little as 60 miles from one another. For instance, as prior comments pointed out, under the Grade A standard, one entity might be permitted to own broadcast stations in all major cities along the northeastern seaboard, including: Washington, D.C., Baltimore, Philadelphia, Trenton, New York City, Hartford, and Boston.⁹⁸ This example obviously raises questions of unrestricted concentration of

⁹⁷ Id. at ¶ 123.

⁹⁸ TRAC/WACCI-VCR Reply Comments, supra note 10, at 15.

control within a region. Consequently, the Commenters strongly support retention of the current local ownership rules.

B. The existing national ownership rules should be retained because any increase would be inconsistent with the Commission's goal to promote viewpoint diversity.

The Commenters strongly oppose any proposal to raise the national ownership limits. Currently, an entity is limited to ownership of 12 broadcast television stations nationally in different local markets, subject to a maximum aggregate national audience reach of 25%. These limits are increased to 14 stations and a 30% national audience reach cap, when a minimum of two stations are minority controlled. In paragraphs 100-101, the Commission considers several proposals to raise the national ownership cap, including eliminating the numerical station limit entirely and allowing the audience reach limit to increase 5% every 3 years to the final limit of 50%.

Maintaining the current national ownership rules best promotes the Commission's goal of viewpoint diversity in broadcast television news and issue-responsive programming. Any relaxation of multiple ownership rules at the national level is contrary to the goals of viewpoint diversity because it would diminish the total number of different filters through which viewpoints are espoused over broadcast television. As the Commission notes in paragraph 95 of the FNPRM:

Limiting the number of outlets that an entity could own on a national level. . . increases the number of entities engaged in the ownership of broadcast

facilities[,] limits degree of control over viewpoints expressed nationally that any entity could have and, as a consequence, furthers the First Amendment values in pluralistic national political discourse.

The proposal to relax current national ownership rules is inconsistent with this observation; it seems to rest upon a belief that only viewpoint diversity at the local level is important to the Commission's statutory First Amendment goal. It is true that television outlets are viewed locally, and, therefore, the preservation of local viewpoint diversity has a more direct impact on viewers. However, this does not mean that national viewpoint diversity is not important too. The Commission's statutory obligation to promote the First Amendment goal of viewpoint diversity would not be achieved if, for instance, it allowed only three or four entities to own all broadcast television stations nationally, but limited each entity to ownership of only one station in each local market.

Moreover, raising the national ownership caps is inconsistent with the Commission's goal of increasing ownership opportunities for minorities and women. Currently, a television broadcaster may exceed the 12-station limit and own up to 14 stations, subject to a 30% reach limit, if two or more of those stations are controlled by minorities. This exception is intended to provide an incentive for group owners to provide financing to minority broadcasters, thus promoting diversity.⁹⁹

⁹⁹ See Amendment of Section 73.3555, Memorandum Opinion and Order in Gen. Docket No. 83-1009, 100 FCC 2d 74, 94 (released 1985) (stating that minority incentive in national multiple ownership rules is intended to foster minority ownership).

If the limits were raised, existing owners would have less incentive to invest in minority-owned stations. This result would undermine existing minority ownership rules as well as those proposed in Docket No. 94-149.

In that Docket, the Commission is considering whether, and under what circumstances, owners should be permitted to exceed the national television ownership caps in order to provide additional incentives to increase minority and women ownership of mass media facilities.¹⁰⁰ Among other things, the Commission has proposed an incubator program in which broadcasters may share their "talents, experience, and financial resources" with minority and women broadcasters.¹⁰¹ The incentive for large broadcasters to take part in this program is that they would be able to acquire one or more stations above the national multiple ownership limits. For instance, an owner who has reached its national station ownership limit might be able to own an additional station for every minority- or women-owned station that it "incubates."¹⁰² Clearly, raising or eliminating national ownership limits would reduce these incentives for large broadcasters and nullify the Commission's goals toward greater minority and women ownership in broadcasting. Thus, the Commenters strongly urge the Commission to retain the current

¹⁰⁰ Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rule Making in MM Docket Nos. 94-149 and 91-140 (1995).

¹⁰¹ Id. at ¶ 16.

¹⁰² Id.

national ownership limits.

- C. **Satellite stations should be counted in national multiple ownership limits because the rationale for exempting satellites no longer exists.**

One proposed change that Commenters support, however, is to include satellite television stations within the national multiple ownership limits. Satellite television stations are full-power broadcast stations that retransmit all or part of the programming of a parent station that is ordinarily commonly owned.¹⁰³ Currently, a television station that qualifies as a satellite is exempt from the national multiple ownership limits.¹⁰⁴ As the Commission notes in the outstanding proceeding, the rationale for the exemption was that "satellite stations primarily rebroadcast the programming of parent stations rather than originate programming."¹⁰⁵ However, in an earlier Report and Order in that proceeding, the Commission lifted that restriction so that satellites may now originate an unlimited amount of programming.¹⁰⁶

In the satellite television proceeding, which is incorporated into this Further Notice, the Commission seeks comment on whether satellite stations should continue to be

¹⁰³ FNPRM at ¶ 104.

¹⁰⁴ Id.

¹⁰⁵ Television Satellite Stations Review of Policy and Rules, Second Further Notice of Proposed Rule Making in MM Docket No. 87-8, 6 FCC Rcd 5010, 5010 (1991) [hereinafter Television Satellite Stations].

¹⁰⁶ Television Satellite Stations, Report and Order in MM Docket No. 87-8, 6 FCC Rcd 4212, 4216 (1991).

exempt from the limitations of the national multiple ownership rules.¹⁰⁷ Because the exemption of satellites is harmful to the Commission's goal of viewpoint diversity, satellites should be counted in the national multiple ownership limits. Since the rationale for satellite exemption no longer exists, it would be arbitrary and capricious for the Commission to retain the exemption.¹⁰⁸

D. The existing radio-television cross-ownership rules should be retained because any further relaxation would reduce viewpoint diversity.

Currently, the radio-television cross-ownership rules provides that an entity may not own both a radio station and a television station located in the same local market. A waiver, however, is permitted when the radio-television combination occurs in one of the top 25 television markets and 30 separately owned broadcast licensees remain after the combination, or if the waiver involves a failed station, or if the waiver request

¹⁰⁷ Television Satellite Stations, Second Further Notice of Proposed Rule Making in MM Docket No. 87-8, 6 FCC Rcd at 5010.

¹⁰⁸ Commenters also note two petitions filed by OC/UCC, TRAC and WACCI-VCR in MM Docket No. 87-7 that are still pending. In the Petition for Reconsideration filed Aug. 12, 1991, OC/UCC et al. requested that the Commission reconsider its Report and Order and 1) subject satellite stations to national ownership limits, 2) hold that a full service applicant would prevail against a satellite renewal applicant without a comparative hearing, 3) limit satellite stations to retransmitting the signal of an adjacent or nearby station, and 4) clarify that satellites are subject to § 103 of the Children's Television Act of 1990. In the Petition for Partial Stay or Alternative Relief, also filed Aug. 12, 1991, OC/UCC et al. asked for a partial stay, or, at the very least, that any applications granted for satellites during the pendency of the rule making be conditioned on the outcome of the proceeding. These petitions have been outstanding for over two and a half years. Commenters urge the Commission to act promptly on them.

satisfies five specific public interest concerns.¹⁰⁹ The Commission now considers whether a single entity may be permitted to own combinations of AM, FM and television stations when a lesser number of licensees-- that is, fewer than 30-- remain in a market.¹¹⁰ The Commenters strongly support retention of the current rules and reject any proposal for relaxation. As discussed above, an artificial determination of what is sufficient for diversity, i.e. 30 stations, is arbitrary. Thus, any reduction in the minimum number of different voices that must remain in a market would seriously harm viewpoint diversity. Although, as discussed above, radio stations and television stations may be complementary, the cross-ownership rules nevertheless contributes to viewpoint diversity, and any relaxation would only reduce already existing viewpoint diversity. As a result, the Commission is urged to retain the current cross-ownership rules.

III. CONCLUSION

In sum, the Commission has a statutory public interest obligation to promote viewpoint diversity in broadcast television programming, especially with regard to local news and issue-responsive programming. For viewpoint diversity purposes, there is no substitute for broadcast television. Therefore, in the interest of fulfilling its statutory mandate, the Commission

¹⁰⁹ FNPRM at ¶ 124.

¹¹⁰ Id. at ¶ 131-132.

should retain the current local multiple ownership rules, the national multiple ownership rules, and the radio-television cross-ownership rules. Moreover, satellite television stations should no longer be exempted from the national multiple ownership rules.

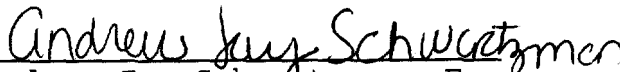
Respectfully submitted,

Of counsel:

Jennifer J. Wang,
Law Student,
Georgetown University
Law Center



Angela J. Campbell, Esq.
Ilene R. Penn, Esq.
Citizens Communications Center Project
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W., #312
Washington, D.C. 20001
(202) 662-9535

 (DP)

Andrew Jay Schwartzman, Esq.
Gigi Sohn, Esq.
Media Access Project
2000 M Street, N.W.
Washington, D.C. 20036
(202) 232-4300

May 17, 1995